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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-shl

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5 In the Matter of:

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7 PURDUE PHARMA L.P.,

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9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

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16 April 25, 2023

17 11:12 AM

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20 B E F O R E :

21 HON SEAN H. LANE

22 U.S. BANKRUPTCY JUDGE

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24 ECRO: ART

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1 OMNIBUS HEARING

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3 Doc. #5560 Notice of Agenda

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5 HEARING re Doc. #5534 Motion Of Debtors For Entry Of Orders

6 (1) (a) Approving Bidding Procedures for Sale of Debtors

7 Avrio Assets, (b) Approving the Designation of Atlantis

8 Consumer Healthcare Inc., a Wholly Owned Subsidiary Of

9 Arcadia Consumer Healthcare Inc., As The Stalking Horse

10 Bidder For The Avrio Assets, (c) Authorizing And Approving

11 Entry Into The Stalking Horse Asset Purchase Agreement, (d)

12 Approving Bid Protections, (e) Scheduling Auction For, And

13 Hearing To Approve, Sale of Debtors Avrio Assets, (f)

14 Approving Form and Manner of Notices of Sale, Auction, and

15 Sale Hearing, (g) Approving Assumption and Assignment

16 Procedures, And (h) Granting Related Relief And (II) (a)

17 Approving Sale Of Debtors Avrio Assets Free And Clear Of

18 Liens, Claims, Interests, And Encumbrances, (b) Authorizing

19 Assumption And Assignment Of Executory Contracts And

20 Unexpired Leases, And (c) Granting Related Relief)

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Sean Lane
3 in the United States Bankruptcy Court for the Southern
4 District of New York, and we're here for an 11:00 hearing in
5 Purdue Pharma L.P. Thank you very much for letting me know
6 I was on mute. As we all know, in COVID the mute button
7 gets us from time to time, all of us. So, thank you for
8 your assistance.

9 I do have a copy of the agenda that was filed on
10 the docket for today's hearing, and I thought I would start
11 the hearing, as we always do by getting appearances. So,
12 let me first get appearances on behalf of the Debtors.

13 MR. ROBERTSON: Good morning, Your Honor,
14 Christopher Robertson, Davis Polk and Wardwell on behalf of
15 the Debtors.

16 THE COURT: All right. And on behalf of The
17 Official Committee of Unsecured Creditors?

18 MR. PREIS: Good morning, Your Honor, Arik Preis
19 from Akin Gump Strauss Hauer and Feld on behalf of the UCC.

20 THE COURT: All right, good morning And on behalf
21 of the Ad Hoc Committee I see Mr. Eckstein here.

22 MR. ECKSTEIN: Good morning, Your Honor. Kenneth
23 Eckstein of Kramer Levin on behalf of the Ad Hoc Committee
24 of Governmental and other contingent litigation claimants,
25 thank you.

1 THE COURT: All right. Good morning. And I know,
2 as always is the case in this hearing, that there is a very
3 long list of folks who have entered an appearance on Zoom,
4 many of whom have no intentions of speaking and therefore
5 don't necessarily need to enter an official appearance on
6 the transcript by announcing their presence here today. So,
7 given that fact I'll turn it over to other folks who need to
8 make an appearance. And so, I do see Mr. Elkin on the
9 screen, so I assume he wants to make an appearance.

10 MR. ELKIN: Yes, Your Honor, good morning. Jordan
11 Elkin with Kirkland and Ellis on behalf of Arcadia Consumer
12 Healthcare, Inc., and Atlantis Consumer Healthcare, Inc.,
13 the proposed stalking horse bidder. And I'm here today with
14 my colleague Christopher Marcus.

15 THE COURT: All right, good morning. And I see
16 Kimberly Meyer here as well. So, let me get that
17 appearance.

18 MS. MEYER: Yes, Kimberly Meyer here as well.
19 Very interested in hearing what the horse bidder has to say.

20 THE COURT: All right, good morning. Any other
21 appearances from any other party? All right, hearing none.
22 If somebody does need to jump in at some point who hasn't
23 yet made an appearance, obviously you'll do that and enter
24 your appearance at that time.

25 So, with that I'll turn the virtual podium over to

1 the Debtors to walk us through the matter that's on for
2 today.

3 MR. ROBERTSON: Great, thank you, Your Honor.

4 Your Honor, for the record Christopher Robertson, Davis Polk
5 and Wardwell on behalf of the Debtors. The only item on
6 today's agenda is the Debtor's request to approve bidding
7 procedures for the sale of substantially all of the assets
8 of the Debtor's consumer health business, which is currently
9 conducted by Debtor Avrio Health, LP.

10 This request is unopposed. We filed a certificate
11 of no objections on Friday the 21st at Docket 5557. That
12 included a revised form of order and revised bidding
13 procedures reflecting informal comments from The Official
14 Creditors' Committee. I would note that The Committee also
15 submitted a statement regarding the distribution of proceeds
16 of the sale, which is not an objection to the procedures or
17 to the sale.

18 But I do understand that Mr. Preis and Mr.
19 Eckstein would like to speak briefly on the statement on
20 behalf of the Creditors' Committee and Ad Hoc Committee,
21 respectively, once I've addressed the Court and responded to
22 any questions that Your Honor may have. I would also note
23 that Mr. Schnitzler from PJT, the Debtor's investment
24 banker, and the Debtor's declarant on this matter, is also
25 on the line if you have questions for him. Your Honor --

1 THE COURT: Oh --

2 MR. ROBERTSON: I'm sorry, Your Honor.

3 THE COURT: No, I guess, just first order of
4 business is to admit his declaration in support of the
5 motion requested relief. Any objection to admitting his
6 declaration in support of the Debtor's motion? All right,
7 hearing no objection, I'm happy to receive it as evidence in
8 support of the requested relief.

9 So, Mr. Robertson, anything else that you'd like
10 to go through this morning before we hear from the other
11 folks who are selling?

12 MR. ROBERTSON: No, no thank you, Your Honor. You
13 know, I'm happy to speak briefly to the timeline of the
14 proposed transaction if that's helpful. I think it's all in
15 our papers, but you know, kind of very briefly. PJT here
16 had, you know, really ample time to run a very robust
17 process to select the stalking horse. You know, this is a,
18 I think, somewhat usual for a Chapter 11 context and that
19 the assets that are being sold here are, you know, the vast
20 of a healthy and profitable business, non-core to the, you
21 know, the bankruptcy estate, but you know significant.

22 And so, PJ&T the freedom to go out to the over 70
23 parties including every party who had trust interest over
24 the course of the case in the assets and run a multi-stage
25 robust process, which we think supports the, you know, the

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1 timeline here as does that fact that, you know, we think
2 that any party likely to come into the auction had already
3 been invited into the process previously and should have,
4 you know, access to the data room and kind of be up to speed
5 on the asset.

6 So, I just wanted to, you know, to kind of preview
7 that, you know, for the Court. And otherwise, we think the
8 procedures are, you know, really pretty typical and
9 customary for transactions of this kind. You know, I don't
10 propose to walk through the details unless Your Honor has
11 any questions for me.

12 THE COURT: All right. And just for any folks who
13 may be listening who aren't familiar with bankruptcy
14 procedures. A stalking horse is a party who steps forward
15 to make a commitment to purchase assets and to thus set a
16 floor for any auction, which is beneficial for the estate
17 and for creditors to know that you have a buyer, and you
18 know, you have a certain value that you've established. And
19 so, that stalking horse gets certain protections because
20 they've essentially made a commitment and spent money even
21 though they aren't necessarily guaranteed to be the party
22 that will end up purchasing the asset.

23 So, that's what stalking horse protections are
24 about if you've seen that phrase in the papers or you hear
25 it discussed during today's hearing. And it is a customary

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1 thing, and my understanding is the stalking horse
2 protections here include a three percent fee and that is --
3 there's a lot of case law that establishes that as a
4 reasonable figure to use to compensate a stalking horse in
5 circumstances like this.

6 So, anything else, Mr. Robertson, you wanted to
7 say about the stalking horse situation for purposes of the
8 record?

9 MR. ROBERTSON: No, Your Honor. I have nothing
10 further.

11 THE COURT: All right. So, I thought it -- I'm
12 going to hear, make sure to hear from everybody. And I
13 thought in terms of order that it made sense probably to
14 hear from The Committee at this point for any statement they
15 wanted to make.

16 MR. PREIS: Thank you, Your Honor. Can you hear
17 me all right?

18 THE COURT: I can hear you just fine, thank you.
19 It's always good to check as I learned self on my -- I
20 learned that myself this morning. So, yes, I can hear you
21 just fine.

22 MR. PREIS: Okay. Good morning, Your Honor. Arik
23 Preis from Akin Gump Strauss Hauer and Feld on behalf of The
24 Official Committee of Unsecured Creditors. As Your Honor
25 noted, we filed a statement regarding the bidding procedures

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1 and the sale in general at Docket Number 5555. To be clear,
2 it's not an objection and we do thank the Debtors for
3 including us in the process thus far and for taking our
4 comments to the bid procedures.

5 We are sure Your Honor has read our statement and
6 I'm not going to repeat it. That being said, I do just want
7 to make the following points. We're now almost 600 days
8 after Judge Drain rendered his decision confirming the Plan.
9 Assuming it would have conservatively taken us six months to
10 effectuate the Plan and to go from confirmation to
11 consummation absent any appeals, we're now more than 400
12 days since much needed funds would have started flowing from
13 Purdue, from the Purdue estate to abate the opioid crisis
14 and compensate victims.

15 In those 400 days, and pursuant to the currently
16 vacated Plan, if we had gone effective more than \$1 billion
17 would have already been utilized for these purposes.
18 Instead, we wait while people continue to die from opioid
19 overdose, people continue to suffer from the disease of
20 unnecessary opioid addition, children continue to be born
21 with NAS, and the cost of these crises continue to grow,
22 putting pressure on states, political subdivisions,
23 hospitals, TPPs, and others.

24 For our part, we field between one and five calls
25 a day from victims all asking variations of the same

1 question. What's going on? Why is the Department of
2 Justice still appealing? Why did I have to file a proof of
3 claim three years ago if three years later no money would be
4 distributed? What happens if I can't find my paperwork?
5 And most tragically for a lot of people, what happens if I
6 die before an administrator reviews my claim and determines
7 my distribution?

8 While we can't ask Your Honor to assist us with
9 the Second Circuit, we are presented at this time with the
10 potential for near 400 million in proceeds to come in from
11 the sale of the Avrio assets. As we mentioned in our
12 pleading, we are pleased with this progress. And if more
13 proceeds come in, and not taking anything away from the
14 stalking horse bidder, even better for the estate.

15 But our focus at this point is getting these new
16 proceeds out for the purposes that we had envisioned in the
17 Plan, and that the Debtors first announced to everyone more
18 than 1,200 days ago. We have begin -- begun talking to
19 Debtors about whether there's a structure in which such an
20 outflow would be possible, and we intend on broadening those
21 discussions soon.

22 We're not looking to bore any creditors off, so to
23 speak, and we are open to creative suggestions and
24 solutions. But the idea this money will come in in the next
25 few months, and absent a decision from the Second Circuit,

1 just sitting in the Purdue bank account is very
2 disappointing. And every party in this case, even I note
3 the Federal Government, notwithstanding its lone wolf status
4 in the pending appeal, should want what's best for the
5 American public and this estate. Thank you, Your Honor.

6 THE COURT: All right, thank you very much. I
7 think, Mr. Preis, it's a very timely speech for those who
8 are listening in and were wondering what is going on and
9 what is the delay. I think we've done everything we can
10 here in the Bankruptcy Court. And folks who are
11 participating in the Bankruptcy Court, at this point we are
12 waiting for the appeal process to work out, and that is
13 regrettably something that takes time. I wish I had, as no
14 doubt you do as well, a better answer for that. It is the
15 process and certainly as soon as we get any news of any sort
16 from the Second Circuit, we will all make sure collectively
17 that the process and what's going on is as transparent as
18 possible and publicized as possible. Because just to let
19 people know, the Second Circuit is not necessarily the final
20 word. There is a potential for any decision by the Second
21 Circuit to be appealed to the Supreme Court, which as some
22 folks may know the Supreme Court does not have to take every
23 case that people request that it take.

24 And so, there is still uncertainty as to the
25 ultimate timing for the ultimate resolution here. So -- but

1 we will make sure, as we've discussed in other context
2 earlier in the case, to schedule a conference very promptly
3 after getting any word of any sort so that we can make sure
4 to disseminate information to all interested parties so that
5 people know. Even if we don't have great news as to
6 finality of the process, people at least know as best as we
7 can tell them what's going on. But thank you for your
8 comments.

9 And Mr. Eckstein, I understand that you also had a
10 statement.

11 MR. ECKSTEIN: I do, Your Honor, thank you very
12 much. Kenneth Eckstein of Kramer Levin on behalf of the Ad
13 Hoc Committee of Governmental, and other contingent
14 litigation claimants. I just have two brief points I'd like
15 to make.

16 First, the Ad Hoc Committee is pleased that the
17 Debtor is moving forward at this time with the sale of the
18 Avrio assets and is supportive of the Debtor's efforts to
19 sell the Avrio assets and with the proposed timeline. In
20 light of the statement that was submitted by the UCC, we
21 simply wanted to make sure that the record was clear that
22 the sale process and the expectation of the stalking horse
23 bidder and the potential third parties are clear and
24 unequivocal.

25 This is an important asset sale and the AHC does

1 look forward to working with the Debtor and the UCC and
2 other key constituencies to ensure the sale process achieves
3 the highest and best price. We did have some concern at the
4 UCC suggestions that the sale process or potential bids
5 should be tied to distributions of the sale proceeds could
6 create some confusion. The UCC statement did go so far as
7 to encourage bidders to shape bids that are specifically
8 tied to creditor allocations or distributions, and we were
9 concerned that that might be misleading. We believe that
10 all parties should focus on maximizing sale proceeds. And
11 if the Court approves the bid procedures, the objectives of
12 all parties, we believe, should be on identifying the
13 highest and best bidder for the assets. The matter in which
14 proceeds from the sale are ultimately distributed after the
15 sale closes should not be a factor that the Court is dealing
16 with today or in connection with winning bid.

17 Your Honor, that said, the AHC shares the UCC's
18 frustration with the delay that has been imposed by the
19 appellate process on the ability to effectuate the Plan and
20 to begin distributions that are of much needed funds to
21 abate the opioid crisis and to compensate the victims of the
22 opioid epidemic. We are hopeful that the Second Circuit
23 will promptly clear the path to effectuate the Plan, or if
24 not, implement an alternative solution to this intractable
25 case.

1 Notwithstanding the frustrations with the delay,
2 we cannot lose sight of the prodigious time and effort that
3 all parties have put into constructing an allocation among
4 the multiple creditor constituencies in this case. That
5 allocation remains fragile and remains an essential part of
6 the Plan which we hope can be implemented in short order.

7 In fact, the AHC and the UCC had incorporated into
8 the allocation agreements specific arrangements with respect
9 to the proceeds from the sale of Avrio which was initially
10 expected to occur post-effective date. And we would expect
11 that those understandings will remain in place when a Plan
12 is implemented.

13 The AHC remains in active dialog with the UCC and
14 with other parties in this case about options for how this
15 case can be effectuated and we expect those discussions to
16 continue in earnest. And we hope they'll in fact become
17 increasingly active in the very short order. Those
18 discussions, however, should not be tied to this sale
19 process involving third party bidders.

20 In conclusion, Your Honor, we would encourage the
21 Court to approve the sale and bidding procedures and allow
22 the parties to deal with the issue of insuring a swift
23 distribution of proceeds through a Plan of Reorganization as
24 promptly as possible. Thank you.

25 THE COURT: All right, thank you very much. I'm

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1 going to hear from Ms. Meyer in one moment but let me just
2 ask if there's any other party that wishes to be heard
3 before I hear from Ms. Meyer. All right. Ms. Meyer, I know
4 that you were on the line, I think earlier you said you
5 wanted to hear what people had to say.

6 So, you may or may not have something that you
7 want to say yourself. If you do, I'm happy to hear it. But
8 certainly, if you're here to get information and to hear
9 what folks were going to say about the status of the case,
10 in particularly about the sale, obviously you're welcome to
11 be here for that and not say anything, it's up to you. So,
12 Ms. Meyer, is there anything that you wanted to add?

13 CLERK: She left.

14 THE COURT: All right. She appears to have left
15 the zoom hearing, so I'll take it that she wanted to be here
16 to hear what information people would provide about the sale
17 and about the status of the case, which I think there's been
18 some very helpful information conveyed on that.

19 Any other party have anything else to say in
20 connection with the requested relief today? All right.

21 I'm happy to grant the motion. I do note the
22 certificate of no objection. I do note that it has the
23 support of the constituencies on the line here today. And
24 my understanding is that today's approval is not about the
25 allocation proceeds, everyone reserves their rights in all

1 respects as to how that should work in what is a landscape
2 that may change in ways that we can't predict in the near
3 future.

4 So, the only thing I have is I think I had just a
5 couple of comments on the proposed order, and they all have
6 sort of one theme. So, looking at the proposed order and I
7 think I'm looking at the black line, I think I'm looking at
8 the -- let me make sure I can identify this properly for you
9 all -- Exhibit B, the comparison order. So, just for
10 purposes of identifying where I am. And my comments are
11 really all up -- so, Paragraph 20 through say 28, which are
12 all about timing. And the idea would be that if there is a
13 assumption and assignment notice there's -- it basically
14 says at this point, the Debtor shall, as reasonably
15 practical after entry of this order, and in no doubt,
16 provide sufficient notice served on each relevant counter
17 party the potential assumption of assignment notice.

18 And then there's an objection deadline in
19 Paragraph 21 that says it's got to be filed by a particular
20 date, which is typical to do if I don't have a date. I
21 understand -- I understand the changing, the changeable
22 nature of these things, but I did see later on that when
23 you're talking about the supplemental assignment, any
24 supplemental assumption of assignment notice, that you tied
25 the objection date to the notice itself. And I thought that

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1 that was one way to address the actual, initial round of any
2 potential assumption of assignment notices to have it run
3 from the date that that notice is filed or provided to the
4 party, Rocco.

5 So, that way we can sort of tweak the objection
6 deadlines in '21 and essentially steal from the order how
7 you handle the supplemental assignment notice, assumption of
8 assignment notice. So, that was -- I wanted to throw that
9 out there for your consideration.

10 Any thoughts, Counsel?

11 MR. ROBERTSON: No, Your Honor, that's perfectly
12 acceptable. We'll have that notice on file and out to all
13 parties tomorrow. And you're correct that that date as
14 hardwired in the order contemplates filing the notice
15 tomorrow. Totally happy to make it 14 days after service of
16 that notice.

17 THE COURT: All right. And then the other thing,
18 what I've tended to do in garden variety cases is have once
19 somebody gets an assumption of assignment notice and
20 (indiscernible) costs and all that stuff, is to have 30
21 days. I don't want -- I don't -- that's not magic number,
22 that's been my default. But I do see that this is going to
23 be served by first-class mail, so 14 days with first-class
24 mail, and maybe I'm scarred thinking of how long mail took
25 during COVID. But so, there are a couple of ways to address

1 that.

2 One is to lengthen the time to say 21 days and use
3 first-class mail. The other is to say, well, we'll serve it
4 by overnight mail and handle it that way. So, I -- there's
5 a couple of ways to deal with it and I'm open to your
6 suggestions what way you think is -- makes the most sense
7 for the -- given the case.

8 MR. ROBERTSON: Sure. Yeah. I think looking at
9 the calendar if we add three days that puts the assumption
10 and assignment objection deadline the same day as the bid
11 deadline, which is probably okay, although I think I would
12 prefer to serve by first-class mail and move that up a day
13 or two if we can.

14 THE COURT: Yeah, that's fine. I thought you
15 might want to do that.

16 MR. ROBERTSON: Yeah.

17 THE COURT: So, that's fine. So, maybe then
18 you're changing 14 to 17. Is that what I'm hearing?

19 MR. ROBERTSON: I think that's right. And just to
20 kind of (indiscernible), this is a -- it's not a heavy
21 burden on the Debtors to serve by first-class mail. There
22 aren't that many contract counterparties given, I think, how
23 long we are into the case and just the nature of the
24 business. So, it's not an issue.

25 THE COURT: All right. And the only other thing

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1 in that connection since its first-class mail, I would just
2 say to the extent that something's put in the language -- to
3 the extent that something is returned as undeliverable, to
4 put in language that say the estate will then take all
5 reasonable efforts to determine the actual proper place for
6 sending such a notice, and then promptly send it. So, just,
7 you know, just preparing for potential eventualities.

8 So, those are my comments. As I said, not major
9 issues, but just ones to make sure that that process goes
10 smoothly and consistent with due process.

11 And so, I see Ms. Meyer, you're back on. I had
12 earlier -- we were talking about the case and then you
13 dropped off. And I didn't know if you had anything that you
14 wanted to say in connection with the matter that's on for
15 today. I know you had earlier said that you were here to
16 get some information, to hear what people had to say. So,
17 you don't have to say anything at all. But certainly, I
18 wanted to give you the opportunity if there's something that
19 you wanted to say.

20 MS. MEYER: Thank you very much, Your Honor. I
21 did want to say that being one of the creditors I had a lot
22 of problems and wanted to go on record specifically with my
23 situation with the pharmaceutical industry, Purdue Pharma
24 specifically. I am and was on probably over 50 medications
25 prescribed, and no longer take any medications, nothing for

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1 nothing, including addiction medicine, diabetes medicines,
2 thyroid medicines. I can go on and on and on.

3 I think we had the opportunity, or I could
4 probably have the opportunity to put a pharmaceutical
5 business out of business, the pharmaceutical industry out of
6 business. So, I just hope that everybody sees the big
7 picture. My intentions are for good, and always will be. I
8 want to work with everybody involved, including Purdue and
9 the pharmaceutical industry because I think they have a
10 really big role to play in our healthcare. I just hope that
11 we can all come together and find a solution to the problems
12 that are going on with addiction, specifically, and mental
13 healthcare. Thank you.

14 THE COURT: All right. Thank you very much for
15 your comments and I think everybody would agree that that's
16 a -- that is a -- very much a desire we should all have, to
17 have the system work for the best for people's health and
18 wellbeing. And certainly, I think that's the intent behind
19 the Plan that is currently part of the Second Circuit, and
20 we'll see how those appeals play out. And you already heard
21 that discussed earlier. So, thank you very much for your
22 comments. I wish you all the best.

23 MS. MEYER: Thank you, Judge.

24 THE COURT: All right. So, with that I'm happy to
25 approve the motion, and I'll just wait -- if you could send

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1 a blackline version of the proposed order, that would be
2 great. And with that let me ask if there's anything else
3 that we need to address here this morning?

4 MR. ROBERTSON: Nothing from the Debtors, Your
5 Honor.

6 THE COURT: All right. Anything from any other
7 party this morning? All right. Hearing nothing, I wish you
8 all a very good day, be well and safe, and see you in the
9 not-too-distant future. Thank you.

10 MR. ROBERTSON: Thank you, Your Honor.

11 (Whereupon these proceedings were concluded at
12 11:40 AM)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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6

Sonya M. Ledanski Hyde

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8 Sonya Ledanski Hyde

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20 Veritext Legal Solutions

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22 Suite 300

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24

25 Date: April 28, 2023